OIPRD
OFFICE OF THE INDEPENDENT POLICE REVIEW DIRECTOR

655 Bay Street 10th Floor Toronto, ON M7A 2T4

November 26, 2019

Mr. Jason Kranz
58 Queen St. South
Kitchener, ON
N2G 1V6

Chief Bryan Larkin
Waterloo Regional Police Service
200 Maple Grove Road
Cambridge ON N3H 5M1

Constable J. Hiuser
Waterloo Regional Police Service
200 Maple Grove Road
Cambridge ON N3H 5M1

Constable M. Bourdon
Waterloo Regional Police Service
200 Maple Grove Road
Cambridge ON N3H 5M1

Constable R. Gregory
Waterloo Regional Police Service
200 Maple Grove Road
Cambridge ON N3H 5M1

Re: Request for Review – Waterloo Regional Police
OIPRD Complaint Number: E-20190117124430398l

Find attached the decision of the Independent Police Review Director in the above matter.

Please be advised that the *Police Services Act*, our governing statute, does not provide for an appeal of this decision. The only means by which to review this decision is to bring an application for judicial review in the Superior Court of Justice.

If you have any questions or concerns, please contact me at 416-246-7071 (Agent ID 1118), toll-free at 1-877-411-4773, or via email at oiprdreviews@ontario.ca.

Katie Harris
Review Coordinator

DECISION OF THE INDEPENDENT POLICE REVIEW DIRECTOR

REQUEST FOR REVIEW

OIPRD COMPLAINT: E-201901171244303981

The Office of the Independent Police Review Director (OIPRD) has now concluded its review of Chief Larkin's decision regarding the above noted misconduct complaint by Mr. Jason Kranz against Constables Rob Gregory, Michael Bourdon and James Hiuser of the Waterloo Regional Police Service (WPRS). The complaint was investigated by Sergeant Beth Houston.

Following the WRPS investigation of Mr. Kranz's complaint, the Chief concluded that the allegations of Neglect of Duty and Discreditable Conduct against Constable Bourdon, the allegation of Neglect of Duty against Constable Gregory, and the allegation of Discreditable Conduct against Constable Hiuser were all unsubstantiated. Mr. Kranz has sought a review of the investigation. For the reasons that follow, the findings of the Chief are **confirmed**.

Summary of Complaint and Investigative Findings

Mr. Kranz complained of two incidents involving police misconduct. These will be reviewed below.

(1) July 25, 2018 incident – Allegation of Discreditable Conduct against Constable Hiuser

On July 25, 2018, Mr. Kranz reported that he was walking on a roadway through a construction zone when Constable Hiuser "came out of nowhere" and threatened to arrest him. Mr. Kranz noted that Constable Hiuser was angry that he was walking on the partial roadway.

Sergeant Houston's investigation of Mr. Kranz's complaint revealed that, on July 25, 2018, Constable Hiuser was working a paid duty shift at a construction site, to ensure the safety of road crews and the public. While sitting in his cruiser, Constable Hiuser observed Mr. Kranz standing directly in front of his cruiser, videotaping the vehicle. Mr. Kranz was standing on the roadway, between the cruiser and the crew within the construction site. Constable Hiuser exited the cruiser and advised Mr. Kranz that he was free to videotape the

site but needed to leave the roadway for his safety. When Mr. Kranz refused to leave, Constable Hiuser informed him that he could be arrested. Constable Hiuser grabbed Mr. Kranz's arm in order to move him from the roadway. Once Mr. Kranz complied with his direction, Constable Hiuser returned to his cruiser.

Sergeant Houston reviewed a partial audio recording of the interaction between Mr. Kranz and Constable Hiuser. Sergeant Houston determined that Constable Hiuser could have done a better job at explaining his safety concerns to Mr. Kranz. Constable Hiuser's approach left Mr. Kranz with the impression that Constable Hiuser was threatening to arrest him for walking on the roadway. The recording revealed that Constable Hiuser spoke to Mr. Kranz in a calm and professional manner.

(2) August 31, 2018 incident – Allegations of Discreditable Conduct and Neglect of Duty against Constable Bourdon; and Allegation of Neglect of Duty against Constable Gregory

On August 31, 2018, Mr. Kranz stated that Constable Gregory directed that he be arrested without investigating why Mr. Kranz reacted in the way that he did. Mr. Kranz alleged that he was tasered for no reason, and when the paramedics arrived, they provided a sample of his blood to the police. Mr. Kranz also alleged that Constable Bourdon falsely alleged that Mr. Kranz had kicked someone in the head. This false information resulted in Mr. Kranz being remanded into custody.

Sergeant Houston's investigation revealed that, on August 31, 2018, police received reports of a male, later identified as Mr. Kranz, randomly assaulting people in a parking lot area. Constable Gregory arrived on scene. Civilian witness 2 informed Constable Gregory that he had been punched in the face and pointed towards an area where the suspect was seen walking. As Constable Gregory walked towards that area, he was stopped by a woman who stated that her 82-year-old father (civilian witness 3) had been assaulted. Civilian witness 4 had witnessed the assault on civilian witness 3 and tried to intervene. Mr. Kranz pushed civilian witness 4 onto the ground and assaulted him.

Constable Bourdon arrived on scene shortly afterwards. Constable Gregory pointed out Mr. Kranz and informed Constable Bourdon that there were grounds to arrest. Constable Bourdon identified himself as an officer and placed Mr. Kranz under arrest. However, Mr. Kranz resisted, attempting to walk away, kicking and punching towards the officers. An officer, who has since retired, arrived on scene and observed Constables Gregory and Bourdon struggling to arrest Mr. Kranz. The retired officer placed Mr. Kranz in a headlock in an attempt to ground him. Mr. Kranz struck him in the groin area, then grabbed his groin and refused to let go. Constable Bourdon deployed his Conducted Energy Weapon (CEW)[1] as

[1] It can also be called by its manufacturing name, Taser.

a result. Mr. Kranz continued to struggle and the CEW was deployed two more times. Officers were finally able to handcuff Mr. Kranz.

As part of his investigation, Constable Bourdon reviewed the available video surveillance and observed Mr. Kranz kicking a male in the head. Further, civilian witness 4 indicated that once he was pushed onto the ground by Mr. Kranz, Mr. Kranz kicked him and then tried to kick him in the head. This information was included in the crown brief synopsis. Mr. Kranz was subsequently convicted of two counts of assault and assault with the intent to resist arrest.

Finally, Sergeant Houston found that the paramedics arrived on scene to remove the taser prongs from Mr. Kranz's back. At no time was any blood sample turned over to the police.

Test on Review

On a review of the Chief's decision further to section 71 of the *Police Services Act*, there are two issues to be considered. The first issue is whether the professional standards investigation was reasonable, meaning all the relevant evidence was gathered and all the issues raised in the complaint were addressed. The second issue is whether the finding of the Chief of Police could reasonably be supported by the available evidence.

In his review submissions, Mr. Kranz complained about the conduct of an officer who attended the Maplehurst Correctional Centre. This is a new allegation. As this allegation did not form part of the investigation conducted by Sergeant Houston, it cannot be reviewed through this review process. If Mr. Kranz wishes to pursue these allegations, he would need to file a new complaint, which would be screened in accordance with section 60 of the *Police Services Act.*

Reasonableness of the Chief's Investigation

As part of the investigation, Sergeant Houston reviewed the OIPRD complaint, and the notes and duty statements of the involved officers. Sergeant Houston also interviewed Mr. Kranz and listened to a partial audio recording between Mr. Kranz and Constable Hiuser. Additionally, Sergeant Houston reviewed relevant police records and the crown brief associated with Mr. Kranz's criminal case.

I do note that despite Mr. Kranz's complaint revealing an allegation of excessive use of force with respect to deployment of the CEW, the investigative report did not deal with this issue as a separate *Code of Conduct* allegation. While it would have been best practice to deal with the use of force issue under the Unlawful or Unnecessary Exercise of Authority

allegation, the failure to do so was not fatal to the reasonableness of the investigation. The use of force allegation was adequately addressed in the analysis portion of the investigative report and provided me with sufficient information to understand the Chief's decision.
Overall, Sergeant Houston conducted a reasonable investigation, having identified and secured all the relevant evidence and reported on all the allegations raised in Mr. Kranz's complaint.

Reasonableness of the Chief's Decision

Having reviewed the investigation and Mr. Kranz' review submissions, I am of the view that the Chief's decision was reasonable. In other words, there were no reasonable grounds to believe that misconduct had occurred.

(1) July 25, 2018 incident – Allegation of Discreditable Conduct against Constable Hiuser

The Chief concluded that while Constable Hiuser's communication skills could have been better during his interaction with Mr. Kranz, the conduct of the officer did not constitute misconduct. Based on a review of the investigation, I find this conclusion to be reasonable.

While Mr. Kranz indicated that the officer was angry during the interaction, a review of the audio recording does not support such a conclusion. Importantly, Constable Hiuser was justified in engaging with Mr. Kranz in the first place. As a paid duty officer, Constable Hiuser was tasked with ensuring the safety of those on the construction site and the general public who may be walking by. In this case, Mr. Kranz was standing in an unsafe area. In trying to get Mr. Kranz to move to a safer area, Constable Hiuser failed to both adequately articulate his safety concerns or explain that an arrest for obstruction could occur if police direction was not followed. Notably, once Mr. Kranz complied with his direction, Constable Hiuser disengaged from the interaction and no longer interfered with Mr. Kranz.

While the miscommunication may have led to Mr. Kranz believing that the officer could have arrested him for merely walking on a roadway, objectively assessed, Constable Hiuser's conduct does not rise to the level of misconduct. Rather, it is a performance issue that should be addressed. This case is a helpful reminder of the importance of officers communicating their commands and authority in a clear manner to avoid confusion.

(2) August 31, 2018 – Allegations of Discreditable Conduct and Neglect of Duty against Constable Bourdon; and Allegation of Neglect of Duty against Constable Gregory

Mr. Kranz was arrested for assault. In his OIPRD complaint, Mr. Kranz did not dispute that

he committed the criminal offence of assault. However, he does believe that Constable Gregory should have sought to determine why he acted the way he did *before* directing Constable Bourdon to make the arrest. Under the *Criminal Code*, a police officer can arrest if he or she has reasonable grounds to believe that an individual has committed an offence.

There is no requirement for an officer to prove that an individual has committed the offence beyond a reasonable doubt; no requirement to establish that the charge would likely result in a conviction; and no requirement to determine whether mitigating factors played a role in the actions of the individual. Once an officer has the requisite grounds to arrest, the officer can make the arrest. In this case, Constable Gregory arrived on scene shortly after receiving reports of Mr. Kranz randomly assaulting individuals. Constable Gregory spoke to civilian witnesses who provided a description of Mr. Kranz and information on the various assaults. This allowed Constable Gregory to form the grounds to arrest. Once Constable Bourdon arrived on scene, he was entitled to rely on the grounds formed by Constable Gregory and make the arrest. I concur with the Chief that the arrest was lawful.

With respect to the use of force, I find the Chief's conclusion to be reasonable. The force used against Mr. Kranz during his arrest was both justified and not excessive. Once the officers had the grounds to make an arrest, section 25 of the *Criminal Code* makes it clear that a police officer who is authorized by law to do anything in the administration or enforcement of the law (*e.g.,* make an arrest), is justified in using as much force as is necessary for that purpose, provided that he acts on reasonable grounds.

An officer's assessment of the appropriate use of force option to use is based on the subject's behavior. In this case, Mr. Kranz not only resisted arrest by struggling with Constables Gregory and Bourdon but became assaultive when the retired officer stepped in to assist. When Mr. Kranz punched the retired officer in the groin area and then held on, Constable Bourdon was justified in deploying his CEW. While this initial deployment was effective in having Mr. Kranz let go of the retired officer, Mr. Kranz continued to struggle. So, the CEW was deployed a second time. When Mr. Kranz continued to disregard the officers' commands, the CEW was deployed for a third time. This finally resulted in the officers being able to control and handcuff Mr. Kranz. Given the behavior that Mr. Kranz was exhibiting, the use of the CEW was appropriate.

Lastly, in his review submissions, Mr. Kranz disputes that the individual in the video surveillance was him. He further submits that he never kicked anyone in the head. I note that the criminal allegations that resulted from the interaction led to Mr. Kranz being convicted. Disputing the factual basis of a criminal allegation would have been best dealt with in court. It is not for this review to re-investigate the incident. Further, given that the video surveillance and the witness statement does not support Mr. Kranz' allegation that Constable Bourdon "made up" the fact that he had kicked someone in the head, it was

reasonable for the Chief to have found that no misconduct had occurred.

Accordingly, it was reasonable for the Chief to have concluded that there was insufficient evidence to believe that misconduct had occurred, and his findings are **confirmed**.

Dated at Toronto this 26th day of November, 2019.

Sylvana Capogreco
Independent Police Review Director